

12

Dartmouth

Wells (Richard)

T H E

Bishop of Salisbury's

S P E E C H

I N T H E

H O U S E O F L O R D S,

U P O N T H E

T H I R D R E A D I N G

O F

The BILL to inflict Pains and Penalties
on *FRANCIS* (late) Bishop of Ro-
CHESTER,

The 15th of M A Y, 1723.



L O N D O N,

Printed by S. BUCKLEY in *Amen-Corner*. 1723.

[Price Sixpence.]

of Salisbury

THE

IN THE

OF RECORDS

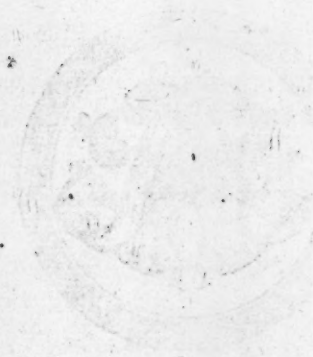
AND THE

READING



to the Bishop of Salisbury

1753



1753

[unclear]

T H E
 Bishop of Salisbury's
 S P E E C H
 I N T H E
 HOUSE OF LORDS, &c.

MY LORDS,

AS I have sometimes troubled your Lordships with what I had to say in some other Debates, I believe it will be expected that I should say something in a Case so extraordinary as this is; and wherein a Brother Bishop is so nearly concerned. I beg leave to begin with taking notice of some Things that were peculiarly address'd to this Bench, both by the Reverend Prelate, and his Counsel, from the Bar.

The first is, That we would consider how agreeable it may be to the Canons and Discipline of the Church, in this extraordinary Manner to deprive a Bishop of all his Preferments; and to prohibit him the Use and Exercise of his Function for his Life.

As to this Objection, whatever Influence it may have abroad among ignorant People, when the Speeches come to be printed; yet, as to your Lordships, who know our Constitution so well, I cannot imagine that it can have any Weight or Influence at all. And indeed when I consider all the Acts of Parliament relating to the Supremacy, that have been made for near two hundred Years; when I consider the Articles of our Church, our Canons, and the Subscriptions that the Bishop himself must have made, and must have required from others, in the Exercise of his Function as a Bishop; when, I say, I consider all these things, it is Matter of Wonder to me, that such an Objection should be made, either by a Bishop of the Church of *England*, or by a Lawyer of the Kingdom of *England*.

I do not indeed recollect above one Instance of a particular Act of Parliament made to deprive a Bishop; which is, that of *Fisher* Bishop of *Rochester*; who was so deprived in the Time of *Henry VIII.* But, as to general Acts of Parliament, whereby both Bishops and Presbyters have been depriv'd of their Preferments, we have a good Number. Thus, in the Beginning of *Queen Elizabeth's* Reign, almost all the Bishops of *England* were so depriv'd: And at the Revolution, many were so; and all might have been so, if they had not comply'd with the Terms of the Act of Parliament: And at the Restoration, many hundreds of Presbyters were depriv'd in the same Manner. And I conceive that it cannot well be doubted, but that the same Authority which can make Laws by which the whole Bench may be depriv'd, may exert it self in a particular Case, if they have just Reasons for it.

As to the Tryal of Bishops, for any Crimes they shall be guilty of, we are to consider the different Nature of the Crimes of which they are accused; and the Tryal by Law must be accordingly. If the Crime be of an Ecclesiastical Nature, such as Ecclesiastical Courts can take cognizance of, as Simony, Heresy, and the like; the Tryal regularly must be by the Arch-Bishop of the Province, taking to his Assistance some of his Suffragan-Bishops. But even in this Case, if either the Arch-Bishop shall, upon Complaint, neglect to try him; or, if upon Tryal he shall acquit and absolve him; the Accuser may appeal to the King in Chancery: Which Court may appoint a Commission of Delegates, who may, by the Authority of the Crown, judge him, deprive him of his Bishoprick,

prohibit him the Use of his Function for his Life, (if the Crime deserve it) tho' he were before acquitted by the Arch-Bishop. But if the Crime be of a Civil Nature, such as Treason, (which is the Case now before us) the Ecclesiastical Authority has nothing at all to do with it; and should any Ecclesiastical Judge attempt to meddle with it, he would be judg'd to attempt against the King's Crown and Dignity, and quickly have his Proceedings stopp'd, by a Prohibition out of the Temporal Courts: And I would beg leave to observe further, that were this Bishop to be try'd in the common Course of Law, for the Crimes whereof he is accused in this Bill, it must be, either by your Lordships, as a Member of this House; or by the Judges and a Jury in *Westminster-Hall*. I would not at present say which, because it would lead me out of the Way: But in this Case, if either your Lordships, or the Judges below, should pass Sentence upon him for the Treason of which he is here accused, that Sentence would, *ipso facto*, deprive him of his Bishoprick: It would also make him liable to lose his Life; but it would not, *ipso facto*, take it away, as it would his Bishoprick: He might notwithstanding that Sentence live many Years; but from the Moment of it, would be no more Bishop of *Rocheſter*.

These Things, I humbly conceive, are abundantly sufficient to answer this first Difficulty; and therefore I shall add no more but this one Observation: That the Way that is now taken to deprive him, is the only Way that I know of, wherein the Bishops can have any Part in the Sentence of Deprivation.

The next Thing that was suggested from the Bar, particularly to this Bench, was, That we should consider well what we are doing, and have a Care that we do not, by concurring in this Bill, make our Titles to our Bishopricks precarious.

As to this Admonition, the Answer is very easy; That it becomes us, as we have the Honour to have Seats in Parliament, to take care to do Justice, as, on the one side, to the Prisoner; so, on the other side, to our King and Country: And to trust in God, that in so doing we shall neither hurt our selves, nor our Successors. But, so far as just Judges may look to Events, the Argument seems to me to lie the other Way: For, if for want of doing Justice against Traytors to King *George*, the Pretender should happen to prevail, (which God avert) the Title of Protestant Bishops is like to be very precarious indeed.

As to the Power of Parliament to pass Bills of this kind, the Parliament always had it, has frequently exercis'd it, and always must have it; it being essential to the very Being of the supreme Power. The Lives and Liberties of every Man in *England* are subject to it; and though the Exercise of this Power may be dangerous to Persons, who will venture upon treasonable Practices, trusting to their Cunning and Artifice to skreen them from the Law; yet I have that Confidence in the Integrity and Justice of the Crown, and two Houses of Parliament, that, so long as this Example is followed, of giving a full and fair Hearing to the Persons accused, innocent Men cannot easily suffer; or, in all Events, that if Corruption or Faction should ever so far prevail, that there should be Danger to innocent Persons, it will be much easier to corrupt Witnesses or Juries, or, to find other Methods to destroy them, than it will be to prevail upon a Parliament to do it: As I am persuaded that, in this particular Case, had there been any Corruption, some other Method would have been found out, more effectually to come at the Person concern'd, than this is like to do.

The last Particular that the Bishop peculiarly address'd to this Bench, was, That we would consider the Words of *St. Paul to Timothy; against an Elder* *1 Tim. v. receive not an Accusation, but before two or three Witnesses.* The Sense of which
19. Words his Lordship understood to be, That an Accusation should not be so much as receiv'd against an Elder or Presbyter, and much less against a Bishop, but upon the Oaths of two or three Witnesses.

In Answer to this, I beg leave to observe, that our Translation renders the Words, not, *upon the Oaths*; but, *before two or three Witnesses*: which seems to import a very different Sense from that his Lordship puts upon them. But, not to enter into any critical Examination of the Truth of our Translation, or, what the real Sense of the Words is, I would only make these two short Observations: First, That the Sense the Bishop puts upon them, that an Accusation against a Presbyter or Bishop, must not be so much as receiv'd into Court, but upon the Oaths of two or more Witnesses, is not practis'd in the Church of *England*; and, I believe, never was practis'd in any Christian Church whatever.

The

The second Observation I would make is, That whatever be the Sense of these Words, it regards only the Conduct of a Bishop towards his Presbyters; but certainly was never intended to give a Law to the Supreme Power of a Kingdom, in its Proceedings in Cases of High Treason, against any Subject whatsoever.

But the Bishop urges further, that the *Jewish* Law did require at least two or more Witnesses in all Judicial Proceedings; and from thence infers, that it ought to be so amongst us.

In Answer to this it may be reply'd, that this is a Part of the Judicial Law of the *Jews*, which was not given to us, and therefore doth not oblige us any more than the rest of that Law doth; except, where the Reason of the thing lays an Obligation upon us. But indeed, I am of Opinion, that that Law doth oblige us, so far as it was intended to oblige them, and so far as it can be adapted to the infinite Variety of Cases, that must happen in Judicial Matters. That Law is very short, and therefore must leave many Questions that may be made about it, undetermined: I shall at present take notice of these two only, which may be material to our present Dispute; the first is, Whether the Meaning of it be, that all Controversies and Accusations whatever, must be determined by Witnesses and no other way? or, Whether upon Supposition that the Matter be to be determined solely by Witnesses, and no Light can be brought to it any other way; that then the Witnesses must be at least two? The Second is, Whether those Witnesses must swear directly to the Fact; for Instance, that they saw such a Man murder another, or the like; or whether it may not be sufficient, that they swear to such Circumstances, as infer a strong and violent Presumption, that such a Fact was committed by such a Person?

These things are left undetermined in that short Law of the *Jews*; but I humbly conceive, are sufficiently determined by the Nature of the thing; and by the Laws of all Nations, and particularly of our own. It is true indeed, that in Cases of High-Treason, we have from Political Considerations determined, that there must be two positive Witnesses, to some one or more Overt Acts of the same Treason; but, as to all other Crimes, that equally affect the Lives and Estates of all the Subjects of *England*, this is not the Case; and Men may by Law lose their Lives, when there is not so much as one positive Witness to the Fact. I beg leave to explain this in the Words of my Lord Chief Justice Coke; "*When a Tryal is by Witnesses, regularly the Affirmative ought to be proved by two or three Witnesses; but when the Tryal is by Verdict of twelve Men, there the Judgment is not given upon Witnesses, or other kind of Evidences, but upon the Verdict; and upon such Evidence as is given to the Jury, they give their Verdict; and many times Juries, together with other matter, are much induced by Presumptions.*" And indeed, if no Man could be convicted of Murder, or Robbery, or other Crimes of that Nature, but by two positive Witnesses that saw the Fact done; nothing would be easier or safer, than the Commission of those Crimes; and no Man could have any Security, either for his Person or his Estate: And therefore, if in Cases of High-Treason our Law requires positive Witnesses, it is not from any moral Necessity, or Point of Conscience; but from political Reasons, which must, and always will be, subject to the Judgment of Parliament.

1 Instit.
fol. 6.

Having now done with what was from the Bar peculiarly applied to this Bench, and having I hope, given a very plain Answer to it: I now beg your Lordships Leave to proceed more directly to the Bill it self. And here, two things are necessary to be considered, in order to convince your Lordships, that it is a Bill fit to be passed: The first is, the Lawfulness of it; the second is, the Prudence or Expediency of it.

As to the Lawfulness of it, it will be necessary also to consider two things; first, Whether your manner of Proceeding in this Bill be Lawful: secondly, Whether the Bishop be really Guilty of the Crimes charg'd upon him.

As to the manner of Proceeding, many things have been objected; That it is by way of Bill, and not a Tryal in the Course of Law; That Evidence has been admitted, that would not have been admitted in any of our Courts; That these Things are contrary to the Liberty of the Subject; That every Subject has a Right to the Laws of his Country; and That he has an Injury done him, if he be denied the Benefit of them: This I take to be the Sum of what has been objected, against the Justice of your Proceedings in this Bill.

In Answer to these Objections, I beg leave to consider, first, wherein the Liberty of *England* consists, which is a Point commonly pretty much mistaken. Many People are apt to imagine, that the Difference betwixt us, and some of our neighbouring Countries, is, that they are under Absolute Power, and we are not; whereas in truth all Countries, that are Supreme within themselves, have equally an Absolute Power; and in the Nature of the thing it cannot possibly be otherwise. No Government can subsist, if there be not a Power in it, to change, to abrogate, to suspend, or dispense with its Laws, as Necessity or Conveniency shall require; which is what we call Absolute Power; and therefore, the Difference betwixt one Government and another, does not lie in this, that one has such a Power and the other has not; but lies merely in the Difference of the Hands, in which this Power is placed: Where this is placed in one Hand, in the King, we call that an Absolute Monarchy: Where this is not solely in the King, but only as he acts in conjunction with the States of the Kingdom, that we call a Limited Monarchy; and the People that live under such Government, are called a Free People; because they live under Set Laws, which could not at first be made, nor can afterwards be altered or dispens'd with, but by their own Consent: However, there is still in such Countries, a Power, equally above all their Laws, as there is in the most absolute Monarchy in the World.

What I have said upon this first Head, will in a great measure explain a second Question: What that Right is, which the Subjects of this Country have to its Laws: which is in short, a Right to claim the Benefit of them against the Crown, or any Court acting under the Crown, till the States of the Kingdom, (which are virtually every Man in the Kingdom) think fit to consent to the Alteration of 'em. The King is indeed Supreme, but his Power is only according to the Laws in being: By them he is bound to act, and if any of his Officers act contrary to 'em, what they do is null and void; and they are punishable for it; and the Subjects have a Claim of Right against them: But if the King and his People think fit to come to a new Agreement to alter any such Law, there's an end of all Claim of Right in the Subject: the Claim is taken away by their own Consent; for, as I said before, every Man in the Kingdom virtually consents, to what is done by an Act of Parliament.

And there is an absolute Necessity, that there should be such a Power as this in every Country; for the State of humane Affairs is so changeable, that it does not admit of any Set of unalterable Laws. What is Good at one time, may be Destructive at another; and what is generally good, may, under particular Circumstances, require a Dispensation by a proper Authority. And here, give me leave to observe to your Lordships, the Difference there is betwixt the eternal Laws of Justice and Righteousness, and all positive Laws whatever. That as to the first, we are made for them, and the nearer we do in all things conform to them, the more noble, and lovely, and excellent Creatures we are: but as to positive Laws, they are all made for us; and the more they conform to us, the more they obviate all our Wants and Difficulties; the more they answer to all our Necessities, the better they are.

As to what is complain'd of, that your Lordships have admitted Evidence to be read, that would not have been admitted in the Courts below: I conceive, that acting in the Capacity you now do, you have a full Power to do it, and have not broken any of the general Rules of Justice by it. You have let in all the Light, that you thought might be proper to give you a full Knowledge of the Matter; and in the Capacity you now act, I cannot but humbly be of Opinion, it was your Duty to do so; but in forming of your Judgments, I take for granted, that your Lordships will distinguish, and lay no more Weight upon any thing than it deserves.

As to the Rules of receiving Evidence in *Westminster-Hall*, I conceive, that they are no part of natural Justice, but only artificial Rules fram'd for Conveniency; and bind no Courts, but as they have agreed to them, and so are become the Customs of the Court. That these Rules are no part of natural Justice appears from hence, that even among our selves they are different in different Courts: That those used in our Courts, are very different from those used in other Countries: That they differ here, according to the different Causes or Crimes that are to be tried. Nay, they are so far from being fundamental Parts of Justice, that they must require a good deal of Time and Art to form them. And I am perswaded, that was a Person of good natural Sense,

Sense, who knows nothing of the Law, asked his Opinion, he would be apt to think it to be a part of natural Justice, that every Person that prosecuted a Cause in any Court, should be at Liberty to produce before that Court, whatever he thought material to his Cause. And there is no doubt, but that this was the original Way of Proceeding; but that in process of Time, when Courts came to have a good deal of Business, and they found by Experience, that this Way of laying every thing before 'em, tended to lengthen Causes (which was especially inconvenient where Juries are concerned, who must end a Cause before they part,) these Rules were gradually found out, which, tho' they may be, for the Reasons above specified, generally convenient; yet, may sometimes hinder Justice, by not suffering all the Light to come into Court, that may be material in the Cause.

Having said thus much concerning the Justice of your Method of Proceeding, I now come to consider the second and the main Point of Justice to be regarded in this Bill; which is, whether the Bishop be Guilty or not, of the treasonable Practices charg'd upon him in it. And in this, I shall be the shorter, because your Lordships have heard the Evidence on both Sides, and all that has been said from the Bar by both Sides upon it; and because, there are many noble Lords in the House, much abler to lay things of this Nature distinctly and clearly before your Lordships, than I am.

The Cause of *Kelly* is so connected with that of the Bishop, that I must beg leave to speak a few Words to the one, before I proceed to the other. As to *Kelly*, I would observe in the first Place, that one strong Presumption of his Guilt is, that when he was first taken up, he resisted the Officers; that he seized his Sword, and some Papers that had been taken away from him; and was resolute to burn those Papers, tho' with the apparent Hazard of his own Life, and being guilty of the Murther of one of the Officers that had seized him.

In the next Place, it is prov'd before your Lordships, that after he was taken up, the People at his Lodgings burn'd the rest of his Papers; a plain Evidence, that they who knew his manner of Life and Conversation, suspected that he was Guilty. And this is agreeable to what *Neynoe* told the Chancellor of the *Exchequer*; that there was at that time, a general burning of Papers.

Thirdly, Another Presumption of his Guilt is, that when He was taken up the second time, he offered several Sums of Money, to the People of the House where he was in Custody, to suffer him to escape, as appears from their Oaths at the Bar. These things I mention, not as full Proofs of his Guilt, but as strong Presumptions, that make every thing else that is sworn against him very credible.

The chief Evidences of his Guilt, are, a great Number of intercepted Letters, both from him, and to him, containing treasonable Matters. Those from him, are by several Witnesses prov'd to be his Hand-writing, particularly by the Officers of the *Post-Office*, who took them and transcribed them. And as to those to him, several Witnesses have prov'd, that he gave Orders at several Publick-Houses to take them in, when they came from the Post; that he himself received them from thence, opened, and read them: And it is also further proved, that Answers were returned to them in his own Hand-writing. These things all together, I take to be such plain and strong Evidences of his Guilt, that I shall trouble your Lordships no further about him.

As to the Person concerned in this Bill, though it be a great Trouble to me, to think, that any Bishop of this Church should be guilty of so foul a Crime, as that objected to him; yet, I cannot but be of Opinion, that if he be really guilty, the Interest of our Church, as well as Justice to our King and Country, do require, that he should be convicted and punished. And indeed, I cannot but be humbly of Opinion, that whoever believes *Kelly* to be guilty, must believe the Bishop to be guilty too.

I shall not Insist upon what is commonly called Hear-say-Evidence, though there be a great deal of it against the Bishop; only must observe, that the Conduct of a Protestant Bishop must have been very odd and unaccountable, if he be Innocent; that so many Jacobites, (as have done in this Case) should declare, that they not only esteem'd him to be in the Plot, but to be the chief Conductor of it. It is however fit to say something as to the Case of *Neynoe*; because the Bishop and his Counsel have taken up so much of your Lordships

Time,

Time, and produced so many Witnesses to prove him a Knave. I did indeed myself always think him to be a Knave, and that nothing that he said was to be believed, merely upon his Authority; but on the other side, the Testimony of the greatest Knave in the World, may be taken against himself; and they themselves have proved, that he was a Jacobite, and thoroughly in that Interest, even when he was making some Discoveries against them; and therefore, what he says, in that respect bears some Weight, as being against Persons whom he favoured, and would hurt as little as possible: Some other Things that he said are also confirmed by concurrent Circumstances, and other Discoveries; and these may have their Weight, tho' he were never so great a Knave. One of the Things that he said in his Confession, was, that he frequently went with *Kelly* to the Bishop of *Rocheſter's*, and left him there, (as *Kelly* told him) to Write his Letters. This is confirmed by a credible Witness at your Bar, who swears, that *Neynoe* used to be frequently at his House, and told him, at least three or four times, that he waited there for a sensible, ingenious Gentleman, that was gone about Business to the Bishop of *Rocheſter*: He did not indeed tell him his Name; but the thing seems to me to look stronger than if he had; because, it would have looked more like a Piece of Art and Contrivance, to have told the Name of a Man, whom he knew to be gone to the Bishop about a criminal Correspondence. I would only beg leave to take Notice to your Lordships of one thing more, relating to *Neynoe*: the Bishop's Witnesses have fully proved, that *Neynoe* told them, that the Chancellor of the *Exchequer* had given him several Sums of Money, to endeavour to get out of *Kelly*, the Explication of the Cant Names that were used in the Correspondence; and that he had promised him much greater Sums, if he would go to *France*, and get it out of *Dillon*, and the Jacobites there: the Inference from which I take to be very plain, that the Court did not then know, who the Persons were, that were designed by those Cant Names; and that they did believe that *Kelly* did know, and that *Dillon* and the Jacobites in *France* knew too; which effectually and fully confutes that Suggestion of the Bishop, of which he did not bring the least Proof, that the Plot was a Contrivance of Persons in Power.

The next thing I would beg leave to take Notice of, relating to the Bishop, is a Letter, (taken among his Papers) from a Lady of great Quality; of which the Bishop, tho' it was objected to him by the Counsel for the Bill, has taken no Notice; which I conceive he would and ought to have done, had it been possible to give any fair Account of it. The Lady in that Letter tells him, *that she sent something that she had received, she could not tell for whom, but let it be for whom it would, she thought He might be trusted, and that it could not be put into better Hands*: A strong Suspicion this, considering all Circumstances, that here was a Correspondence by Cant Names which the Lady did not certainly know, but believed the Bishop might; or however, that he was in all Events a Person to be trusted.

The Dutchess of
Ormond.

Another very suspicious Circumstance against the Bishop, is, the Letters from Captain *Halsted*; and what has been proved at your Bar, that this same Captain *Halsted*, a little before he went in his Ship to fetch over the Duke of *Ormond*, waited upon the Bishop, and stay'd with him an Hour. This Thing indeed directly proves nothing; but all things considered is very suspicious; and the more so, because the Bishop has given no Account, either of his Acquaintance with him in general, or of the particular Reason of that Visit, at a time that leaves so much ground to suspect the worst.

The next Particular that deserves your Lordships Consideration, is, the Letter to *Dubois*, found among the Bishop's Papers when he was taken up, and found now to be sealed with the same Seal with that Letter taken upon the Bishop's Servant, which he confesseth to be his own Hand-writing. It is not indeed proved, that the Letter to *Dubois*, is the Hand-writing of the Bishop; but any Body that reads it, will easily be persuaded, that it is not the natural and ordinary way of Writing of any Person; but a disguised Hand like a Print; except only some few Letters, which escaped the Care of the Writer, and are very like those of the Bishop. But after a long Examination, which has taken up a great deal of your Lordships Time, it appears plainly, that the Seals are the same, and that the one could not be counterfeited from the other; because, the first Letter was originally taken with the Seal broken, and was in the Possession of the House of Commons when the second Letter was taken upon

the

the Bishop's Servant: It appears plainly by this Letter to *Dubois*, that the Person who wrote it was in a secret and dangerous Correspondence; that he was an Acquaintance of Mr. *Johnson*, or *Kelly*; that he received Letters by his Hand, and wrote an Answer in his Hand: How far all these Circumstances taken together, prove the Bishop to be the Author of this Letter, I must submit to your Lordships Judgment; for my part, I think they do; especially considering, that the Bishop has given no Account of it, which he ought to do by Law, of a Letter of this nature, plainly proved upon Oath to have been in his Possession.

I now beg leave to proceed to that which is the Principal Charge against the Bishop, the dictating to Mr. *Kelly* the three Letters of the 20th of *April*; sign'd, one, by the Name of *Jones*; another, by the Name of *Illington*; the third, by the Figures 1378; which the Decyphers explain by the Letter R. The first, directed to Mr. *Chivers*, or *Dillon*; the second, to Mr. *Musgrave*, or Lord *Marr*; the third, to Mr. *Jackson*, or the Pretender.

It may be proper, before I take notice of the Proofs which shew that the Bishop did really dictate these Letters, to take notice of an Objection with respect to the Time; the Letters are dated the 20th of *April*, and the Bishop has produced five or six of his Servants, who swear, that about that time he was so very ill, that he could not write himself; and that he did not see any Person, to whom he could dictate these Letters. Now in Answer to this, it may be replied; that it does not appear, that all the Servants which the Bishop then had, were produced before your Lordships; and you cannot but be sensible, that Treasonable Practices are commonly carried on in a very secret Way; and it appears, that the Bishop's Correspondence with *Kelly* has been so carried on; for tho' there is plain Evidence, that they were frequently together, and that they were acquainted is confess'd, both by the Bishop and *Kelly*; yet, scarce any one of the Servants produc'd, would confess, that ever they had seen *Kelly*, or so much as ever heard of the Name of *Johnson*, which was the Name by which he went. In the next place, none of these Witnesses prove, that the Bishop was so bad that he could see no Company, till about the 16th or 17th of *April*; and it's very probable, that the Letters must have been dictated so long, if not longer, before the 20th on which they are dated; because *Kelly* was to transcribe and put 'em into Cypher, which is a Work of Time and Care; and perhaps after all, they might be designedly post-dated, that the Bishop finding himself going into a great Fit of the Gout, might have all that to plead which your Lordships have heard, if the Matter should ever be called in Question.

Upon all these Considerations, I cannot but think it very clear, that the Bishop might have dictated these Letters: We are now therefore to examine, whether he did or no.

The first thing that brought any Light into this matter, was the small Accident of a Dog being sent from *France*, which, by the intercepted Letters appeared to be sent to one that went by the Names of *Jones* and *Illington*. When Mrs. *Barnes* was examined before the Council, upon *Kelly's* being taken up, it appears plainly she was upon the Reserve, and would confess nothing that she thought might tend any way to hurt *Kelly*; but being ask'd about this little Dog, who it was for, she readily answered, that *Kelly* had told her, it was for the Bishop of *Rocheſter*; which she has since confirm'd by Oath at the Bar of this House. This little Accident, not suspected at the time of the Discovery to be of any Consequence, has given Occasion since, to look into so many Circumstances, as plainly bring the matter home to the Bishop. And indeed, if all the Particulars in the intercepted Letters be compared, with those things that are in proof with respect to the Bishop, I believe your Lordships will be of Opinion, that they cannot all belong to any one Person in the World besides himself. In the first place, since it's proved that *Kelly* wrote these Letters, the Person who dictated 'em must have been an Acquaintance of *Kelly's*; it is confess'd on all hands that the Bishop was so. In the next place, it is implied in one of the intercepted Letters, that the Person that went by the Name of *Jones* and *Illington*, was a Clergyman; so far still agrees to the Bishop. Again further, this Person is mention'd in all the intercepted Letters as a Person of great Consequence and Credit, upon whose Advice the Party very much depend: And indeed, the very Air and Manner of writing the three Letters, plainly shew, that the Person who wrote 'em, thought him-

self so; this also agrees with all the other Discoveries about the Bishop: Were there no other Particulars but these, it will be hard to imagine that they could well belong to any other Person; but if we consider further, that this Jones or Illington came to Town such a Day of the Month, went out of Town such another Day of the Month, came back again to Town such another Day, was himself sick at such a time, that his Wife was sick at such another time, and that she died at such a time; all which are in Evidence with respect to the Bishop; if we do, I say, consider all these Circumstances together, it will plainly appear, that they can belong to no other Man in the World but the Bishop.

After this, I humbly apprehend nothing need be said; however I beg Leave, just to mention something relating to the Letter, that was taken upon the Bishop's Servant; by the whole Air of which Letter, it looks, as coming from a Person who did not esteem himself to be innocent; but who thought, that nothing could be Legally prov'd against him; and therefore there is not one Word of his Innocence in it, which is the first Thought that must naturally have come into the Head of any one that really was so: He writes wholly with the Air of a Man that had been used to Intrigues; speaks of the Concern that his Friends should have for him and the Cause; discourses largely about the Kind of Evidence that was against him; takes notice in particular what cannot affect him; ** i.e. Report.* If (says he) the Narrative * relates chiefly to Neynoe's, Sample's, and Layer's Affairs, so far it cannot affect me, for I never heard of the Names of either of the Three, till after this Plot broke out. It is plain by these Words, that he did not then know what was in the Narrative against him; but he is very sure, that neither Neynoe, nor Sample, nor Layer could affect him. Could an innocent Man have thus distinguished, and could not they have affected him as much as any Body else, if he really was innocent? Nothing can affect such a Person but Forgery, and that may come from any Quarter; but in the whole Letter he does not express the least Suspicion of Forgery, and yet as I said before, this is the first Thought that must naturally have come into the Head of an innocent Person, because nothing but Forgery could do him any Harm. I would only just beg leave to hint at this one thing more; that as he says that these three Persons could not affect him, because he never knew 'em; so accordingly, they have not affected him, or said any thing of their own Knowledge about him; which is one good Evidence, that what is said against him is not forged but real.

I am afraid that I have troubled your Lordships too long, tho' with a very imperfect Representation of the Justice of this Bill, and therefore shall be shorter upon the next Head, which is the Expediency or Prudence of it.

Had there been what we call Legal Evidence against the Party concerned, Your Lordships, I take for granted, would not easily have gone into this extraordinary Method of proceeding; for tho' it cannot be doubted but that the Parliament have this Power, whenever they think proper to make use of it; yet, I do agree with noble Lords, that it is a Power not fit to be used, but where and when the publick Good requires we should use it, which I humbly conceive is the Case at present. A most dangerous Plot against the Government has been discover'd; a great number of Letters and Papers relating to it, have been laid before the two Houses of Parliament; these have been printed and published by Order of both Houses: The Eyes, not only of our own Country, but of all Europe, are upon us, to see what we will do: Though the Evidence of a Plot in general, be as clear as the Light; and the Evidence against several particular Persons very plain; yet, as our Laws are, it is not what we call Legal Evidence: The Parties concern'd will make no Confession, and we have not the Methods used in all other Countries, to extort Confession from them: What then? Shall we see our King and Country in Danger, and do nothing for them? Shall Conspirators go on with total Impunity, only because they are obstinate, and artificially screen themselves behind the Law? I doubt, My Lords, that if this prove the Case, we shall appear ridiculous in the Eyes of all the World: That our Friends and Enemies both at Home and Abroad will think, that we have no Zeal for the Preservation of our King and Government; and if once they do think so, your Lordships cannot but be all sensible, how this must encourage our Enemies and discourage our Friends, and bring us into that contemptible State, in which no Government was ever long supported.

But a Noble Lord has been pleas'd to observe; that the best way to serve the Government, is to do Popular things, and by that to procure the Love of the People. I perfectly agree in this with the noble Lord, and cannot but be humbly of Opinion, that this Government has done so, as far as it has been able: Our Religion has been preserv'd; Justice has been equally admistr'd to all sorts of People; none of our Rights or Liberties have been invaded; we have liv'd at Peace at home, while many other Countries have suffer'd all the Miseries of War; these are, or I am sure should be esteem'd, Popular things: and if some other things, which might have been for the Good of the People, have not been done; it has been the Fault of those that complain most, and not of the Government. And if there be Discontents now in the Kingdom, it's plain that the Foundation of 'em was laid long ago, by the Enemies to our present Happy Settlement: For I am perswaded, that the Discontents were higher and greater within four Months after the King came to *England*, and shew'd themselves much more, in a number of rebellious Riots and Tumults, than any thing that appears at present; and yet nothing then could be objected to the Government, but that some Persons were not prefer'd; who both before and since have made it too plain that they were not fit to be trust'd.

But as it is the Duty of those in Power, to do all the Popular things they can; so, I must beg leave to observe, that it is the Duty of all the Subjects, (and the Greater they are the more it is their Duty) to put the best Interpretation upon the Actions of the Government, that things will bear, not to misrepresent; not to put false Colours upon things; and much more not to invent Lies and Slanders, and disperse 'em up and down the Kingdom, in order to alienate the Affections of the People: These things have been done, and done with great Care and Diligence, and by some too, who would take it very ill to be call'd Jacobites. These are the chief Causes of the Disaffection among us, and indeed of all the Real Grievances we labour under. Is the King forc'd to put the Nation to Charges, to keep up a greater Number of Forces than otherwise would be needful? It is entirely owing to this Cause. Are our Debts not paid? Is our Credit not so good as we would be glad to have it? Let this artificial Raising of Discontents once cease, and these things will quickly mend of themselves. Indeed, were this a time for it, I think it might plainly be proved, that the Debts we labour under had never been contracted; but for this absurd discontented Humour: Nay, it is to this, that we entirely owe the Danger we are in from this very Plot; for it's plain from all the Intelligence we have about it, that it was carried on upon the Confidence, that all discontented Persons were Jacobites; and tho' the Conspirators did in this greatly deceive themselves; yet it's certain, that they built their Hopes upon this Foundation.

But it's further said by the same noble Lord, that this extraordinary way of proceeding, will not procure Friends to the King; but will rather anger and provoke, and so hurt his Interest instead of helping it.

To this I answer, that I do indeed suspect, that many People will be Angry; as I hear that the Jacobites through the Kingdom are: A plain Evidence this, that they do not think that the Friends of King *George* are worrying one another; for they would not be angry at that. Those that most desire to destroy our Liberties, are become, upon this Occasion, the great Patrons of Liberty; as indeed they have been in a great measure ever since the Revolution, when any thing has been propos'd for the Support of the Government. No sooner were their Schemes of Arbitrary Power in the Time of King *James* overturn'd, and a new Government settled which they did not like; but they, in order to destroy it, set themselves against every thing that was necessary for its Defence, under the Colour of Liberty; that is, they desired to have their own Hands as loose as possible, to hurt it; and the Hands of the Government as much tied up as possible, that it should not be able, either to hurt them, or defend it self. Thus at present, they Clamour against the Additional Forces, tho' establish'd by Parliament; and against all Methods, either to discover or punish the Conspiracy. And they judge right in this for their Cause; because, if they could have carried these Points to their mind, they might then be more free in carrying on their Plots, and with less Danger put them in Execution. For these Reasons I take for granted, that all these People will be Angry; but I cannot but humbly be of Opinion, that

that it is much better they should be Angry with us for Defending our selves; than that they should, first sneer at us, as Fools for neglecting our Defence; and then be able more easily to undo us.

As to others, that possibly may be displeas'd at what we are now doing, I would hope, that a little Time and Consideration will set 'em right, and convince them, that it is not only Just, but (all things considered) Necessary to be done; because, if the Parliament do, upon this occasion, shew their Zeal in the Defence of the Government, it will animate and give Courage to the Friends of it, both at home and abroad. Foreign Powers will be apt to Court the Friendship of a Prince, at the Head of a mighty Kingdom, if they see, that he and his Posterity are like to continue there: All the Affairs of the Kingdom, which respect them, will be manag'd with more Ease, with more Honour, and with less Expence; and they will be inclin'd, not to foment, but to discover Plots, if they come to their Knowledge. But on the contrary, if we give 'em any Reason to suspect, that we look another way, they will quickly do so too, and strive which shall be forwardest to help the Pretender to involve us in Blood and Ruin. And as to the Subjects at home, I would only observe, that all Mankind are apt to shew most Zeal for a Government, when they think it safe, and like to stand, and be able to protect them: But to suspect the contrary, is a most dangerous Temptation to the Fidelity of Subjects, as has been seen by the Experience of all Ages. And therefore I hope, that your Lordships will, by your Unanimity and Zeal in this matter, effectually convince the World, that the Danger does and shall lie, in Opposing, and not in Defending the present Government.

I hope that what I have now been saying, has convinc'd your Lordships, both of the Justice and Prudence of this Bill; give me leave to observe, that your Moderation has been very great too, both in giving so full and fair a hearing, and in making the Penalties so much less than the Crimes deserve.

It is now above a Year since the Plot was first discovered; a Plot of a most desperate Nature, to seize the Persons of the King and Prince, and to bring in a Popish Pretender upon us. The Execution of which, was to be begun by seizing the Tower, and attacking the City of London on all sides; and was thence to spread it self into all parts of the Kingdom. Lord! what Confusion; what Murthers; what Plundering; what Burnings must this have caus'd? Whatever had been the Issue, the very Attempt must probably have occasion'd the Sacking and Burning of this great City: The utter Loss at once of all Publick Credit: The Murther of infinite Numbers of People: The Astonishment and Amazement, and Undoing of almost all, but of those Vile Wretches who would have had the Plundering of all sides: If it had gone on, how many of the Noble Lords that I now see, would have been before this in their Graves? But I forbear going any further in this Tragical Representation, and desire only to observe, that tho' it has been discovered above a Year, how very little of it we yet know; and I do Appeal to your Lordships Consideration, who know the State of the World very well, whether there be any Country in it, either Bond or Free, which, had they discover'd but a fifth part of what we know of a Plot of this nature, would not in a Week's time have found means to get to the Bottom of it. However my Lords, I still commend your Moderation; and do hope, that we shall never find Reason to repent of it, and that this little which is now doing, will be a Warning to Conspirators, not to provoke further the Patience of an injured Nation.

I doubt not but upon this and all other Occasions, your Lordships will be ready to stand by, a Wife, and a Good, and a Merciful Prince; and that you will, according to your Oaths, defend him, against all Treasons, and Traiterous Conspiracies whatsoever.

And in the last place, give me leave as a Christian and a Protestant Bishop to hope, you will do your best, that a Popish Pretender may never be set at the Head of this Protestant Church: One, who must think himself bound in Conscience to destroy it, and instead of that pure Religion which we now enjoy, bring in horrible Superstition and Idolatry, Nonsense and Tyranny; attended with all the sad Calamities, which Popish Princes always have brought, and always must bring upon Protestant Countries.

F I N I S.



